

Gross receipts subject to Retailers' Occupation Tax liability are defined as all the consideration actually received by the seller, except traded-in tangible personal property. See the enclosed copy of 86 Ill. Adm. Code 130.401. (This is a PLR).

October 20, 1999

Dear Xxxxx:

This Private Letter Ruling, issued pursuant to 2 Ill. Adm. Code 1200 (see enclosed), is in response to your letter of August 23, 1999. Review of your request for a Private Letter Ruling disclosed that all information described in paragraphs 1 through 8 of subsection (b) of the enclosed copy of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to COMPANY for the issue or issues presented in this ruling. Issuance of this ruling is conditioned upon the understanding that neither COMPANY nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request.

In your letter, you have stated and made inquiry as follows:

This request for Private Letter Ruling was precipitated by discussions with our customers regarding the inclusion or exclusion of Hazardous & Regulatory Compliance (HRC) charges in or from the taxable base of taxable sales invoices. Our practice is to include these charges in the taxable base of taxable sales; no sales tax, however, is charged if the underlying sale is for resale or otherwise exempt. Some of our customers, on the other hand, have concluded that this charge should be excluded from the taxable base in any case.

We request that you give us your ruling, along with supporting regulation and statute references, as to whether or not the HRC charge (*more fully described below*) should be included in or excluded from the taxable base of taxable sales.

OUR HRC CHARGES:

The HRC charge was instituted to defray the recurring costs associated with governmental regulatory compliance. Federal, state, and local environmental and safety laws and regulations have increased dramatically over recent years, and this government agency regulatory compliance charge is intended to help COMPANY manage these ever increasing expenses.

COMPANY applies a \$3.00 charge to every delivery ticket for cylinder gas products and hard goods that require Material Safety Data Sheets (MSDs). A \$12.00 charge is applied to delivery tickets for bulk gas products.

Some of the government agencies imposing regulations and other requirements that gave rise to the need for the HRC charges are:

1. Environmental Protection Agency,
2. Department of Transportation, and the
3. Occupational Safety and Health Administration.

Refer to the enclosed two-page brochure for more details on the regulations imposed.

OTHER REQUIRED INFORMATION

- The tax period at issue is January 1996 to present.
- COMPANY is a manufacturer and seller of industrial, medical, and specialty gases.
- To the best of my knowledge, the Department has not previously ruled on this or a similar issue for COMPANY.
- COMPANY or its representatives have not previously submitted this or a similar request and withdrew it before a letter ruling was issued.
- All of the interested parties to which this inquiry relates cannot be identified, but a primary interested party is the BUSINESS, a major customer of COMPANY.
- Our conclusions are based on, among other things...

Airco v. Illinois DOR (1991), 223 Ill. App.3d 386, 165 Ill. Dec. 583
Liquid Air Corp. v. Johnson, Ill (1992), 240 Ill. App.3d 722, 608 NE2d 558
Retailers' Occupation Tax Act, ILL. Revised Statutes, ch.120
Regulation Section 22,440.10 (Annotated)
Regulation Sections: 130.410; 130.201; 130.401
General Information Letter ST-98-0122-GIL

We are not aware of any contrary authorities, and all relevant material facts have been disclosed.

If you judge that this Private Letter Ruling Request falls short of the requirements contained in Section 1200.110 (Private Letter Rulings), please issue a General Information Letter pursuant to Section 1200.00 and then contact me for the additional information that would enable you to issue the ruling type we request.

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86 Ill. Adm. Code 130.401. Processing and compliance charges, such as the Hazardous & Regulatory Compliance charges your company imposes, are overhead costs. Overhead costs are costs of doing business and are not deductible from gross receipts subject to tax even if separately stated on the bill to your customer. See 86 Ill. Adm. Code 130.410, enclosed.

If a sale is a sale for resale or is otherwise exempt, the gross receipts from that sale, including charges such as the Hazardous & Regulatory Compliance charges are not subject to tax.

The facts upon which this ruling are based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the material facts as recited in this ruling are correct and complete. This ruling will cease to bind the Department if there is a pertinent change in statutory law, case law, rules or in the material facts recited in this ruling.

I hope this information is helpful. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.